

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS_____
GEORGE POGATSIAS,

Plaintiff,

-against-

THE DIOCESE OF BROOKLYN AND QUEENS
and XAVERIAN HIGH SCHOOL,Defendants.

X

Date Index No. Purchased:

Index No.:

Plaintiff designates Kings
County as the place of trial.The basis of venue is
Defendant's place of domicile.**SUMMONS**Plaintiff resides in Jersey City,
New Jersey

The Above Named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 14, 2019

Yours, etc.,

By: Adam P. Slater, Esq.
SLATER SLATER SCHULMAN LLP
Counsel for Plaintiff
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-and-



By: Gary Certain, Esq.
CERTAIN & ZILBERG, PLLC

Counsel for Plaintiff
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New York, New York 10022
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TO:

THE DIOCESE OF BROOKLYN AND QUEENS
310 Prospect Park West
Brooklyn, New York 11215

XAVERIAN HIGH SCHOOL
7100 Shore Road
Brooklyn, New York 11209

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____X

GEORGE POGATSIAS,

Plaintiff,

-against-

THE DIOCESE OF BROOKLYN AND QUEENS
and XAVERIAN HIGH SCHOOL,

Defendant(s).

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VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, George Pogatsias (“Plaintiff”), by his attorneys Slater Slater Schulman LLP and Certain & Zilberg, PLLC, brings this action against the Diocese of Brooklyn and Queens and Xaverian High School and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to the Children Victims Act (“CVA”) (L. 2019 c. 11). *See* CPLR §§ 30.10; 208(b); 214-g.

2. This Court has personal jurisdiction over Defendant the Diocese of Brooklyn and Queens (“Diocese”) pursuant to CPLR §§ 301 and 302, in that the Diocese either resides in New York or conducts or, at relevant times, conducted activities in New York that give rise to the claims asserted herein.

3. This Court has personal jurisdiction over Xaverian High School (“Xaverian”) pursuant to CPLR §§ 301 and 302, in that Xaverian either resides in New York or conducts or, at relevant times, conducted activities in New York that give rise to the claims asserted herein.

4. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

5. Venue for this action is proper in the County of Kings pursuant to CPLR § 503 in that one or more Defendants resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

PARTIES

6. Plaintiff is a 49 year old individual residing in Jersey City, New Jersey. Plaintiff was an infant at the time of the sexual abuse alleged herein.

7. At all times material to the Verified Complaint, Diocese was and continues to be a non-profit religious corporation, organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

8. At all times material to the Verified Complaint, Diocese was and remains authorized to conduct business under the laws of the State of New York.

9. At all times material to the Verified Complaint, Diocese's principal place of business is 310 Prospect Park West, Brooklyn, New York 11215

10. The Diocese oversees a variety of liturgical, sacramental, and faith formation programs.

11. The Diocese has various programs that seek out the participation of children in its activities.

12. The Diocese, through its agents, servants, and/or employees has control over those activities involving children.

13. The Diocese has the power to employ individuals working with and/or alongside children within Defendant Diocese, including but not limited to those at Xaverian

14. At all times material to the Verified Complaint, Xaverian was a religious educational institution affiliated with, associated with, or operating under the control of the Diocese.

15. At all times material to the Verified Complaint, Xaverian was licensed to conduct business as a school in the State of New York and the City of New York.

16. At all times material to the Verified Complaint, Xaverian maintained its principal place of business at 7100 Shore Road, Brooklyn, New York 11209

17. At all times material to the Verified Complaint, Father Daniel J. Sheehan ("Father Sheehan") was an agent, servant, and/or employee of Xaverian

18. At all times material to the Verified Complaint, Father Sheehan was an agent, servant, and/or employee of the Diocese.

19. At all times material to the Verified Complaint, while an agent, servant and/or employee of Xaverian, Father Sheehan remained under the control and supervision of the Diocese.

20. At all times material to the Verified Complaint, while an agent, servant and/or employee of Xaverian, Father Sheehan remained under the control and supervision of Xaverian.

21. At all times material to the Verified Complaint, while an agent, servant and/or employee of the Diocese, Father Sheehan remained under the control and supervision of the Diocese.

22. At all times material to the Verified Complaint, while an agent, servant and/or employee of the Diocese, Father Sheehan remained under the control and supervision of Xaverian.

23. Xaverian placed Father Sheehan in positions where he had immediate access to children.

24. The Diocese placed Father Sheehan in positions where he had immediate access to children.

**THE CATHOLIC CHURCH'S LONG HISTORY
OF COVERING UP CHILD SEXUAL ABUSE**

25. In 1962, the Vatican in Rome issued a Papal Instruction binding upon all Bishops throughout the world including the Bishop of the Diocese. The instruction was binding upon the Bishop of the Diocese. The instruction directed that allegations and reports of sexual abuse of children by priests were required to be kept secret and not disclosed either to civil authorities such as law enforcement, to co-employees or supervisors of parish priests, or to parishioners generally.

26. Canon law requires Bishops to keep *subsecreto* files also known as confidential files. These files are not to be made public.

27. Because of problems of sexual misconduct of Catholic clergy, the Catholic Church and other organizations sponsored treatment centers for priests that had been involved in sexual misconduct, including centers in Albuquerque, New Mexico, Suitland, Maryland, Downingtown Pennsylvania, and Ontario, Canada.

28. Sexual abuse of clerics by Catholic clergy has been a reality in the Catholic Church for centuries but has remained covered by deep secrecy. This secrecy is rooted in the official policies of the Catholic Church which are applicable to all dioceses and in fact are part of the practices of each diocese, including the Diocese. Sexual abuse of minors by Catholic clergy and religious leaders became publicly known in the mid 1980's as a result of media coverage of a case in Lafayette, Louisiana. Since that time, the media has continued to expose cases of clergy sexual abuse throughout the United States. In spite of these revelations as well as the many criminal and civil litigations the Church has been involved in as a result of clergy sexual abuse of minors, the bishops and other Church leaders continued to pursue a policy of secrecy.

29. All of the procedures required in the so-called "Dallas Charter" to purportedly protect children have been previously mandated in the Code of Canon Law but were consistently

ignored by Catholic bishops. In place of the required processes, which would have kept a written record of cases of clergy sexual abuse, the bishops applied a policy of clandestine transfer of accused priests from one local or diocesan assignment to another or from one diocese to another. The receiving parishioners and often the receiving pastors were not informed of any accusations of sexual abuse of minors.

30. The truth concerning the extent of the frequency of sexual abuse at the hands of Catholic priests and Catholic Church's pervasive campaign to cover up such crimes continues to be revealed. In 2018, the State of Pennsylvania released a grand jury report releasing the name of over 300 "predator priests" in Pennsylvania alone who committed acts of sexual abuse on more than a thousand children, while also noting that there were "likely thousands more victims whose records were lost or who were too afraid to come forward." The report's opening remarks bear repeating here:

We, the members of this grand jury, need you to hear this. We know some of you have heard some of it before. There have been other reports about child sex abuse within the Catholic Church. But never on this scale. For many of us, those earlier stories happened someplace else, someplace away. Now we know the truth: it happened everywhere.

...

Most of the victims were boys; but there were girls too. Some were teens; many were prepubescent. Some were manipulated with alcohol or pornography. Some were made to masturbate their assailants or were groped by them. Some were raped orally, some vaginally, some anally. But all of them were brushed aside, in every part of the state, by church leaders who preferred to protect the abusers and their institution above all.

31. The 2018 grand jury report found numerous, pervasive strategies employed by the Catholic Church which the report referred to collectively as a "playbook for concealing the truth." These measures include but are not limited to the following:

- Make sure to use euphemisms rather than real words to describe the sexual assaults in diocese documents. Never say "rape"; say "inappropriate contact" or "boundary issues."

- Don't conduct genuine investigations with properly trained personnel. Instead, assign fellow clergy members to ask inadequate questions and then make credibility determinations about the colleagues with whom they live and work.
- For an appearance of integrity, send priests for "evaluation" at church-run psychiatric treatment centers. Allow these experts to "diagnose" whether the priest was a pedophile, based largely on the priest's "self-reports" and regardless of whether the priest had actually engaged in sexual contact with a child.
- When a priest does have to be removed, don't say why. Tell his parishioners that he is on "sick leave," or suffering from "nervous exhaustion." Or say nothing at all.
- Even if a priest is raping children, keep providing him housing and living expenses, although he may be using these resources to facilitate more sexual assaults.
- If a predator's conduct becomes known to the community, don't remove him from the priesthood to ensure that no more children will be victimized. Instead, transfer him to a new location where no one will know he is a child abuser.
- Finally, and above all, don't tell the police. Child sexual abuse, even short of actual penetration, is and has for all relevant times been a crime. But don't treat it that way; handle it like a personnel matter, "in house."

32. Refusal to disclose sexually abusing clerics to parishioners and even fellow clerics has been one way utilized by Defendant to maintain secrecy. Another has been to use various forms of persuasion on victims or their families to convince them to remain silent about incidents of abuse. These forms of persuasion have included methods that have ranged from sympathetic attempts to gain silence to direct intimidation to various kinds of threats. In so doing the clergy involved, from bishops to priests, have relied on their power to overwhelm victims and their families.

33. The sexual abuse of children and the Catholic Church's abhorrent culture of concealing these crimes are at the heart of the allegations complained of herein.

34. The Child Victims Act was enacted for the explicit purpose of providing survivors of child sexual abuse with the recourse to bring a private right of action against the sexual predators who abused them and the institutions that concealed their crimes.

FACTS

35. Plaintiff was raised in a devout Roman Catholic family and, in or around 1983, when Plaintiff was 14 years old, Plaintiff was attending Xaverian, a school within and under the auspices of the Diocese.

36. At all relevant times, Plaintiff participated in youth, educational, and/or religious activities at Xaverian.

37. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on Xaverian and Father Sheehan.

38. During and through these activities, Xaverian had custody of Plaintiff and accepted the entrustment of Plaintiff.

39. During and through these activities, Xaverian had responsibility of Plaintiff and authority over him.

40. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on the Diocese and Father Sheehan. During and through these activities, the Diocese had custody of Plaintiff and accepted the entrustment of Plaintiff.

41. During and through these activities, the Diocese had responsibility of Plaintiff and authority over him.

42. Through his positions at, within, or for Xaverian, Father Sheehan was put in direct contact with Plaintiff, a member of Xaverian. It was under these circumstances that Plaintiff came to be under the direction, contact, and control of Father Sheehan, who used his position of authority and trust over Plaintiff to sexually abuse and harass Plaintiff.

43. Through his positions at, within, or for the Diocese, Father Sheehan was put in direct contact with Plaintiff, a student of Xaverian. It was under these circumstances that Plaintiff came to be under the direction, contact, and control of Father Sheehan, who used his position of authority and trust over Plaintiff to sexually abuse and harass Plaintiff.

44. On numerous occasions, while Plaintiff was a minor, Father Sheehan while acting as a teacher, counselor, advisor, mentor, trustee, director, officer, employee, agent, servant and/or volunteer of Xaverian, sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff in violation of the laws of the State of New York.

45. On numerous occasions, while Plaintiff was a minor, Father Sheehan, while acting as a teacher, counselor, advisor, mentor, trustee, director, officer, employee, agent, servant and/or volunteer of the Diocese, sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff in violation of the laws of the State of New York.

46. The abuse occurred from in or around 1983.

47. Plaintiff's relationship to Xaverian, as a vulnerable minor, student, parishioner and participant in school activities, was one in which Plaintiff was subject to Xaverian's ongoing influence. The dominating culture of the Catholic Church over Plaintiff pressured Plaintiff not to report Father Sheehan's sexual abuse of him.

48. Plaintiff's relationship to the Diocese, as a vulnerable minor, student, parishioner and participant in Church activities, was one in which Plaintiff was subject to the Diocese's

ongoing influence. The dominating culture of the Catholic Church over Plaintiff pressured Plaintiff not to report Father Sheehan's sexual abuse of him.

49. At no time did the Diocese ever send an official, a member of the clergy, an investigator or any employee or independent contractor to Xaverian to advise the students or their parents, either verbally or through a school bulletin, that there were credible allegations against Father Sheehan and to request that anyone who saw, suspected or suffered sexual abuse to come forward and file a report with the police department. Rather, the Diocese remained silent.

50. At all times material hereto, Father Sheehan was under the direct supervision, employ and/or control of Xaverian.

51. At all times material hereto, Father Sheehan was under the direct supervision, employ and/or control of the Diocese.

52. Xaverian knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up the inappropriate and unlawful sexual activities of Father Sheehan, who sexually abused Plaintiff.

53. The Diocese knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up the inappropriate and unlawful sexual activities of Father Sheehan, who sexually abused Plaintiff.

54. Xaverian negligently or recklessly believed that Father Sheehan was fit to work with children and/or that any previous problems he had were fixed and cured; that Father Sheehan would not sexually molest children; and that Father Sheehan would not injure children.

55. The Diocese negligently or recklessly believed that Father Sheehan was fit to work with children and/or that any previous problems he had were fixed and cured; that Father Sheehan would not sexually molest children; and that Father Sheehan would not injure children.

56. Xaverian had the responsibility to supervise and/or direct priests and other school educators and personnel serving at Xaverian and specifically had a duty not to aid a pedophile such as Father Sheehan by assigning, maintaining and/or appointing him to a position with access to minors.

57. The Diocese had the responsibility to supervise and/or direct priests and other school educators and personnel serving at Xaverian and specifically had a duty not to aid a pedophile such as Father Sheehan by assigning, maintaining and/or appointing him to a position with access to minors.

58. By holding Father Sheehan out as safe to work with children and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Xaverian entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff's being a minor and by Xaverian undertaking the care and guidance of the vulnerable minor Plaintiff, Xaverian held a position of empowerment over Plaintiff.

59. By holding Father Sheehan out as safe to work with children and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, the Diocese entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff's being a minor, and by the Diocese undertaking the care and guidance of the vulnerable minor Plaintiff, the Diocese held a position of empowerment over Plaintiff.

60. Xaverian, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself Xaverian thus entered into a fiduciary relationship with Plaintiff.

61. The Diocese, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself. The Diocese thus entered into a fiduciary relationship with Plaintiff.

62. Xaverian had a special relationship with Plaintiff.

63. The Diocese had a special relationship with Plaintiff.

64. Father Sheehan owed Plaintiff a duty of reasonable care because Xaverian had superior knowledge about the risk that Father Sheehan posed to Plaintiff, the risk of abuse in general in its programs, and/or the risks that its facilities posed to minor children.

65. The Diocese owed Plaintiff a duty of reasonable care because the Diocese had superior knowledge about the risk that Father Sheehan posed to Plaintiff, the risk of abuse in general in its programs, and/or the risks that its facilities posed to minor children.

66. Xaverian owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents including Father Sheehan out as safe to work with children; encouraged parents and children to spend time with its agents; and/or encouraged its agents, including Father Sheehan, to spend time with, interact with, and recruit children.

67. The Diocese owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents including Father Sheehan out as

safe to work with children; encouraged parents and children to spend time with its agents; and/or encouraged its agents, including Father Sheehan, to spend time with, interact with, and recruit children.

68. Xaverian owed Plaintiff a duty to protect Plaintiff from harm because Xaverian's actions created a foreseeable risk of harm to Plaintiff.

69. The Diocese owed Plaintiff a duty to protect Plaintiff from harm because the Diocese's actions created a foreseeable risk of harm to Plaintiff.

70. Xaverian's breach of its duties include but are not limited to: failure to have sufficient policies and procedures to prevent child sexual abuse, failure to properly implement the policies and procedures to prevent child sexual abuse, failure to take reasonable measures to make sure that the policies and procedures to prevent child sexual abuse were working, failure to adequately inform families and children of the risks of child sexual abuse, failure to investigate risks of child sexual abuse, failure to properly train the workers at institutions and programs within Xaverian, geographical confines, failure to protect children in its programs from child sexual abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying on mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

71. The Diocese's breach of its duties include but are not limited to: failure to have sufficient policies and procedures to prevent child sexual abuse, failure to properly implement the policies and procedures to prevent child sexual abuse, failure to take reasonable measures to make sure that the policies and procedures to prevent child sexual abuse were working, failure to

adequately inform families and children or the risks of child sexual abuse, failure to investigate risks of child sexual abuse, failure to properly train the workers at institutions and programs within the Diocese, geographical confines, failure to protect children in its programs from child sexual abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying on mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

72. Xaverian also breached its duties to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Father Sheehan posed and the risks of child sexual abuse by clerics and other church and school personnel.

73. Xaverian also failed to warn Plaintiff about any of the knowledge that it had about child sexual abuse.

74. The Diocese also breached its duties to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Father Sheehan posed and the risks of child sexual abuse by clerics and other church and school personnel.

75. The Diocese also failed to warn Plaintiff about any of the knowledge that it had about child sexual abuse.

76. Xaverian also violated a legal duty by failing to report known and/or suspected abuse of children by Father Sheehan and/or its other agents to the police and law enforcement.

77. The Diocese also violated a legal duty by failing to report known and/or suspected abuse of children by Father Sheehan and/or its other agents to the police and law enforcement.

78. By employing Father Sheehan at Xaverian and other facilities within the Diocese, the Diocese, through its agents, affirmatively represented to minor children and their families that Father Sheehan did not pose a threat to children, did not have a history of molesting children, that the Diocese did not know that Father Sheehan had a history of molesting children, and that the Diocese did not know that Father Sheehan was a danger to children.

79. By employing Father Sheehan at Xaverian, Xaverian through its agents, affirmatively represented to minor children and their families that Father Sheehan did not pose a threat to children, did not have a history of molesting children, that Xaverian did not know that Father Sheehan had a history of molesting children, and that Xaverian did not know that Father Sheehan was a danger to children.

80. Xaverian induced Plaintiff and Plaintiff's family to rely on these affirmations and did rely on them.

81. The Diocese has never publicly admitted the veracity of the allegations against Father Sheehan, warned the public and/or conducted outreach to potential victims of his sexual abuse. The pattern and practice of intentionally failing to disclose the identities and locations of sexually inappropriate and/or abusive clerics has been practiced by the Diocese for decades and continues through current day. The failure to disclose the identities of allegedly sexually inappropriate and/or abusive teachers and clerics is unreasonable and knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of members of the public, including Plaintiff.

82. By allowing Father Sheehan to remain in active ministry, the Diocese, through its agents, has made and continues to make affirmative representations to minor children and their families, including Plaintiff and Plaintiff's family, that Father Sheehan does not pose a threat to

children, does not have a history of molesting children, that the Diocese does not know that Father Sheehan has a history of molesting children and that the Diocese does not know that Father Sheehan is a danger to children.

83. The Diocese induced Plaintiff and Plaintiff's family to rely on these affirmations and they did rely on them.

84. By allowing Father Sheehan to remain in active ministry, Xaverian, through its agents, has made and continues to make affirmative representations to minor children and their families, including Plaintiff and Plaintiff's family, that Father Sheehan does not pose a threat to children, does not have a history of molesting children, that Xaverian does not know that Father Sheehan has a history of molesting children and that Xaverian does not know that Father Sheehan is a danger to children.

85. As a result of Defendants' conduct described herein, Plaintiff has and will continue to suffer personal physical and psychological injuries, including but not limited to great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful, and embarrassed, feeling alone and isolated, losing faith in God, losing faith in authority figures, feeling estranged from the church, struggling with alcohol and substance problems, struggling with gainful employment and career advancement, feeling helpless, and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, depression, anxiety, feeling dirty, used, and damaged, suicidal ideations, having traumatic flashbacks, feeling that his/her childhood and innocence was stolen, and feeling that his life was ruined. Plaintiff was prevented and will continue to be prevented from performing Plaintiff's normal daily activities; has incurred and will continue to incur expenses for

medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' misconduct, Plaintiff is unable at this time to fully describe all the details of that abuse and the extent of the harm Plaintiff suffered as a result.

86. Xaverian violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require, *inter alia*, school officials, teachers, day care center workers, providers of family or group family day care, and any other child care worker to report suspected cases of child abuse and impose liability for failure to report.

87. The Diocese violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require, *inter alia*, school officials, teachers, day care center workers, providers of family or group family day care, and any other child care worker to report suspected cases of child abuse and impose liability for failure to report.

88. The injuries and damages suffered by Plaintiff are specific in kind to Plaintiff special, peculiar, and above and beyond those injuries and damages suffered by the public.

FIRST CAUSE OF ACTION: NEGLIGENCE

89. Plaintiff repeats and realleges by reference each and every allegation set forth above as if fully set forth herein.

90. Xaverian knew or was negligent in not knowing that Father Sheehan posed a threat of sexual abuse to children.

91. The Diocese knew or was negligent in not knowing that Father Sheehan posed a threat of sexual abuse to children.

92. The acts of Father Sheehan described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with Xaverian.

93. The acts of Father Sheehan described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Diocese.

94. Xaverian owed Plaintiff a duty to protect Plaintiff from Father Sheehan's sexual deviancy, both prior to and/or subsequent to Father Sheehan's misconduct.

95. The Diocese owed Plaintiff a duty to protect Plaintiff from Father Sheehan's sexual deviancy, both prior to and/or subsequent to Father Sheehan's misconduct.

96. Xaverian's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damages set forth herein at length.

97. The Diocese's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damages set forth herein at length.

98. At all times material hereto, with regard to the allegations contained herein, Father Sheehan was under the direct supervision, employ and/or control of Xaverian.

99. At all times material hereto, with regard to the allegations contained herein, Father Sheehan was under the direct supervision, employ and/or control of the Diocese.

100. At all times material hereto, Xaverian's actions were willful, wanton, malicious, reckless, and outrageous in its disregard for the rights and safety of Plaintiff.

101. At all times material hereto, the Diocese's actions were willful, wanton, malicious, reckless, and outrageous in its disregard for the rights and safety of Plaintiff

102. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

103. By reason of the foregoing, Defendants jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION: NEGLIGENT HIRING, RETENTION, SUPERVISION,
AND/OR DIRECTION**

104. Plaintiff repeats and realleges by reference each and every allegation set forth in paragraphs 1 through 103 as if fully set forth herein.

105. Xaverian hired Father Sheehan.

106. The Diocese hired Father Sheehan

107. Xaverian hired Father Sheehan for a position that required him to work closely with, mentor, and counsel young boys and girls.

108. Diocese hired Father Sheehan for a position that required him to work closely with, mentor, and counsel young boys and girls.

109. Xaverian was negligent in hiring Father Sheehan because it knew or should have known, through the exercise of reasonable care of Father Sheehan's propensity to develop inappropriate relationships with children in his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

110. The Diocese was negligent in hiring Father Sheehan because it knew or should have known, through the exercise of reasonable care of Father Sheehan's propensity to develop inappropriate relationships with children in his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

111. Father Sheehan would not and could not have been in a position to sexually abuse Plaintiff had he not been hired by Xaverian to teach, mentor and counsel children in Xaverian.

112. Father Sheehan continued to molest Plaintiff while at Xaverian.

113. Father Sheehan would not and could not have been in a position to sexually abuse Plaintiff had he not been hired by Diocese to teach, mentor and counsel children in Xaverian.

114. Father Sheehan continued to molest plaintiff while at Xaverian.

115. The harm complained of herein was foreseeable.

116. Plaintiff would have been not suffered the foreseeable harm complained of herein but for the negligence of Xaverian in having placed Father Sheehan, and/or allowed Father Sheehan to remain in his position.

117. Plaintiff would have been not suffered the foreseeable harm complained of herein but for the negligence of the Diocese in having placed Father Sheehan, and/or allowed Father Sheehan to remain in his position.

118. At all times while Father Sheehan was employed or appointed by Xaverian, he was supervised by Xaverian and/or its agents and employees.

119. At all times while Father Sheehan was employed or appointed by Xaverian, he was under the direction of, and/or answerable to, Xaverian and/or its agents and employees.

120. At all times while Father Sheehan was employed or appointed by the Diocese, he was supervised by the Diocese and/or its agents and employees.

121. At all times while Father Sheehan was employed or appointed by the Diocese, he was under the direction of, and/or answerable to, the Diocese and/or its agents and employees.

122. Xaverian was negligent in its direction and/or supervision of Father Sheehan in that it knew or should have known, through the exercise of ordinary care that Father Sheehan's conduct

would subject third parties to an unreasonable risk of harm, including Father Sheehan's propensity to develop inappropriate relationships with children under his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

123. Xaverian failed to take steps to prevent such conduct from occurring.

124. The Diocese was negligent in its direction and / or supervision of Father Sheehan in that it knew or should have known, through the exercise of ordinary care, that Father Sheehan's conduct would subject third parties to an unreasonable risk of harm, including Father Sheehan's propensity to develop inappropriate relationships with children under his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

125. The Diocese failed to take steps to prevent such conduct from occurring.

126. Xaverian was negligent in its retention of Father Sheehan in that that it knew, or should have known, of his propensity to develop inappropriate relationships with children under his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

127. Xaverian retained Father Sheehan in his position as mentor and counselor to such children and thus left him in a position to continue such behavior.

128. The Diocese was negligent in its retention of Father Sheehan in that that it knew, or should have known, of his propensity to develop inappropriate relationships with children under his charge and to engage in sexual behavior and lewd and lascivious conduct with such children.

129. Diocese retained Father Sheehan in his position as mentor and counselor to such children and thus left him in a position to continue such behavior.

130. Xaverian was further negligent in its retention, supervision, and/or direction of Father Sheehan in that Father Sheehan sexually molested Plaintiff on the premises of Xaverian.

131. Xaverian failed to take reasonable steps to prevent such events from occurring on its premises.

132. The Diocese was further negligent in its retention, supervision, and/or direction of Father Sheehan in that Father Sheehan sexually molested Plaintiff on the premises of the Diocese.

133. The Diocese failed to take reasonable steps to prevent such events from occurring on its premises.

134. Father Sheehan would not and could not have been in a position to sexually abuse Plaintiff had he not been negligently retained, supervised, and/or directed by Xaverian as a mentor and counselor to the infant parishioners and/or students of Xaverian, including Plaintiff.

135. Father Sheehan would not and could not have been in a position to sexually abuse Plaintiff had he not been negligently retained, supervised, and/or directed by the Diocese as a mentor and counselor to the infant parishioners and/or students of the Diocese, including Plaintiff.

136. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs

THIRD CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

137. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 136 as if fully set forth herein.

138. Through the position to which Father Sheehan was assigned by Xaverian, Father Sheehan was placed in direct contact with Plaintiff.

139. Father Sheehan was assigned as a chaplain at Xaverian, which included Father Sheehan functioning as a teacher, principal, and/or guidance counselor assigned to teach Plaintiff.

140. It was under these circumstances that Plaintiff was entrusted to the care of Xaverian and—under its authority—came to be under the direction, control and dominance of, Father Sheehan.

141. As a result, Father Sheehan used his position to sexually abuse and harass Plaintiff.

142. Through the position to which Father Sheehan was assigned by the Diocese, Father Sheehan was put in direct contact with Plaintiff, then a minor.

143. As a result, Father Sheehan used his position to sexually abuse and harass Plaintiff.

144. There existed a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Xaverian.

145. There existed a fiduciary relationship of trust, confidence, and reliance between Plaintiff and the Diocese

146. Pursuant to its fiduciary relationship, Xaverian was entrusted with the well-being, care, and safety of Plaintiff.

147. Pursuant to its fiduciary relationship, the Diocese was entrusted with the well-being, care, and safety of Plaintiff.

148. Pursuant to its fiduciary relationship, Xaverian assumed a duty to act in the best interests of Plaintiff.

149. Pursuant to its fiduciary relationship, the Diocese assumed a duty to act in the best interests of Plaintiff.

150. Xaverian breached its fiduciary duties to Plaintiff.

151. The Diocese breached its fiduciary duties to Plaintiff.

152. At all times material hereto, Xaverian's actions and/or inactions were willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

153. At all times material hereto, the Diocese's actions and/or inactions were willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

154. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

155. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory and punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION: BREACH OF NON-DELAGABLE DUTY

156. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 155 as if fully set forth herein.

157. Plaintiff, when he was a minor, was placed in the care of Xaverian for the purposes of, *inter alia*, providing Plaintiff with a safe environment to receive an education.

158. As a result, there existed a non-delegable duty of trust between Plaintiff and Xaverian.

159. When Plaintiff was a minor, Plaintiff was placed in the care of the Diocese for the purposes of, *inter alia*, providing Plaintiff with a safe environment to receive an education.

160. As a result, there existed a non-delegable duty of trust between Plaintiff and the Diocese.

161. Plaintiff was a vulnerable child when placed within the care of Xaverian.

162. Plaintiff was a vulnerable child when placed within the care of the Diocese.

163. Consequently, Xaverian was in the best position to prevent Plaintiff's abuse, and to learn of Father Sheehan's repeated sexual abuse of Plaintiff and stop it.

164. Consequently, the Diocese was in the best position to prevent Plaintiff's abuse, and to learn of Father Sheehan's repeated sexual abuse of Plaintiff and stop it.

165. By virtue of the fact that Plaintiff was sexually abused as a minor student entrusted to the care of Xaverian, Xaverian breached its non-delegable duty to Plaintiff.

166. By virtue of the fact that Plaintiff was sexually abused as a minor student entrusted to the care of the Diocese, the Diocese breached its non-delegable duty to Plaintiff.

167. At all times material hereto, Father Sheehan was under the direct supervision, employ and/or control of Xaverian.

168. At all times material hereto, Father Sheehan was under the direct supervision, employ and/or control of the Diocese.

169. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

170. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION: BREACH OF DUTY IN LOCO PARENTIS

171. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 170 as if fully set forth herein.

172. Plaintiff was a minor when his parents entrusted him to the control of Xaverian for the purpose of, *inter alia*, providing Plaintiff with an education.

173. Xaverian owed a duty to adequately supervise its students to prevent foreseeable injuries.

174. As a result, Xaverian owed a duty to Plaintiff *in loco parentis*.

175. Plaintiff was a minor when his parents entrusted him to the control of the Diocese for the purposes of, *inter alia*, providing Plaintiff with an education.

176. The Diocese owed a duty to adequately supervise its students to prevent foreseeable injuries.

177. As a result, the Diocese owed a duty to Plaintiff *in loco parentis*.

178. Xaverian breached its duty *in loco parentis*.

179. The Diocese breached its duty *in loco parentis*.

180. At all times material hereto, Xaverian's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff.

181. At all times material hereto, the Diocese's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff.

182. As a direct result of Xaverian's conduct, Plaintiff has suffered the injuries and damages described herein.

183. As a direct result of the Diocese's conduct, Plaintiff has suffered the injuries and damages described herein.

184. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory and punitive damages, together with interest and costs.

**SIXTH CAUSE OF ACTION: INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS**

185. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 184 as if fully set forth herein.

186. At the time Father Sheehan molested Plaintiff, which Father Sheehan knew would cause, or disregarded the substantial probability that it would cause, severe emotional distress, Xaverian employed Father Sheehan as Plaintiff's mentor and counselor.

187. It was part of Father Sheehan's job as role model and mentor to gain Plaintiff's trust. Father Sheehan used his position, and the representations made by Xaverian about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to violate Plaintiff.

188. At the time Father Sheehan molested Plaintiff, which Father Sheehan knew would cause, or disregarded the substantial probability that it would cause, severe emotional distress, the Diocese employed Father Sheehan as Plaintiff's mentor and counselor.

189. It was part of Father Sheehan's job as role model and mentor to gain Plaintiff's trust. Father Sheehan used his position, and the representations made by the Diocese about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to violate Plaintiff.

190. Xaverian knew and/or disregarded the substantial probability that Father Sheehan's conduct would cause severe emotional distress to Plaintiff.

191. The Diocese knew and/or disregarded the substantial probability that Father Sheehan's conduct would cause severe emotional distress to Plaintiff.

192. Plaintiff suffered severe emotional distress, including psychological and emotional injury as described above.

193. This distress was caused by Father Sheehan's sexual abuse of Plaintiff.

194. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized community.

195. Xaverian is liable for Father Sheehan's conduct under the doctrine of *respondeat superior*.

196. The Diocese is liable for Father Sheehan's conduct under the doctrine of *respondeat superior*.

197. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory and punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**

198. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 197 as if fully set forth herein.

199. As set forth at length herein, the actions of Xaverian, its predecessors and/or successors, agents, servants and/or employees, were conducted in a negligent and/or grossly negligent manner.

200. As set forth at length herein, the actions of the Diocese, its predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

201. Xaverian's actions endangered Plaintiff's safety and caused him to fear for his own safety.

202. The Diocese's actions endangered Plaintiff's safety and caused him to fear for his own safety.

203. As a direct and proximate result of Xaverian's actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

204. As a direct and proximate result of the Diocese's actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

205. In addition to its own direct liability for negligently inflicting emotional distress on Plaintiff, Xaverian is also liable for Father Sheehan's negligent infliction of emotional distress under the doctrine of *respondeat superior*.

206. At the time Father Sheehan breached his duty to Plaintiff, Father Sheehan was employed as Plaintiff's mentor and counselor by Xaverian.

207. It was part of Father Sheehan's job as teacher, advisor, role model and mentor to gain Plaintiff's trust. Father Sheehan used his position, and the representations made by Xaverian about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and touch, Plaintiff.

208. In addition to its own direct liability for negligently inflicting emotional distress on Plaintiff, the Diocese is also liable for Father Sheehan's negligent infliction of emotional distress under the doctrine of *respondeat superior*.

209. At the time Father Sheehan breached his duty to Plaintiff, Father Sheehan was employed as Plaintiff's mentor and counselor by the Diocese.

210. It was part of Father Sheehan's job as advisor, role model and mentor to gain Plaintiff's trust. Father Sheehan used his position, and the representations made by the Diocese about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and touch, Plaintiff.

211. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

EIGHTH CAUSE OF ACTION: BREACH OF STATUTORY DUTY TO REPORT
ABUSE UNDER SOC. SERV. LAW §§ 413, 420

212. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 211 as if fully set forth herein.

213. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Xaverian, including but not limited to its teachers, administrators, and other school personnel had a statutorily imposed duty to report reasonable suspicion of abuse of children in its care.

214. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, the Diocese, including but not limited to its teachers, administrators, and other personnel had a statutorily imposed duty to report reasonable suspicion of abuse of children in its care.

215. Xaverian breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Father Sheehan of children in its care.

216. The Diocese breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Father Sheehan of children in its care.

217. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

218. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE, it is respectfully requested that the Court grant judgment in this action in favor of the Plaintiff, and against the Defendant[s], in a sum of money in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with all applicable interest, costs, disbursements, as well as punitive damages and such other, further and different relief as the Court in its discretion shall deem to be just, proper and equitable.

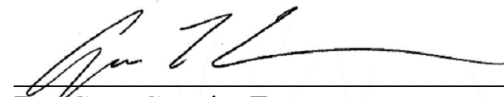
Plaintiff further places defendant(s) on notice and reserves the right that to interpose claims sounding in Fraudulent Concealment, Deceptive Practices and/or Civil Conspiracy should the facts and discovery materials support such claims.

DATED: New York, New York
August 14, 2019



By: Adam P. Slater, Esq.
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(631) 420-9300

-and-



By: Gary Certain, Esq.
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New York, New York 10022
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ATTORNEY VERIFICATION

Adam P. Slater, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury, pursuant to Rule 2106 of the CPLR:


Your affirmant is a partner of Slater Slater Schulman LLP, attorneys for the Plaintiff in the within action;

That he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Affirmant further states that the source of his information and the grounds for his belief are derived from interviews with the Plaintiff and from the file maintained in the normal course of business.

Affirmant further states that the reason this verification is not made by the Plaintiff is that the Plaintiff is not presently within the County of New York, which is the county wherein the attorneys for the Plaintiff herein maintain their offices.

Dated: Melville, New York
August 14, 2019


Adam P. Slater, Esq.

SUPREME COURT OF THE STATE NEW YORK
COUNTY OF KINGS

-----X
GEORGE POGATSIAS,

Index No.:

Plaintiff,

-against-

THE DIOCESE OF BROOKLYN AND QUEENS
and XAVERIAN HIGH SCHOOL,

Defendants.

-----X

SUMMONS & VERIFIED COMPLAINT

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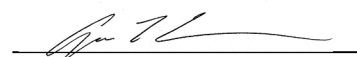
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CERTIFICATION

Pursuant to 22 NYCRR §130-1.1-a, the undersigned, an attorney duly admitted to practice in the courts of the State of New York, certifies that, upon information and belief, and reasonable inquiry, the contentions contained in the annexed document are not frivolous as defined in subsection (c) of the aforesaid section.


Adam P. Slater, Esq.


Gary Certain, Esq.